

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF WEST VIRGINIA

FILED

OCT 31 2007

U.S. DISTRICT COURT  
ELKINS WV 26241

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

HERCULES INCORPORATED,

*Defendant.*

Civ. No. 2:07cv87

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting on behalf of the United States Department of Justice and at the request of the Secretary of the Navy ("Navy") and the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

**STATEMENT OF THE CASE**

1. This is a civil action brought by the United States pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607, against Hercules Incorporated ("Hercules") for recovery of response costs incurred or to be incurred by the United States in connection with the release of hazardous substances at and from Allegany Ballistics Laboratory ("ABL"), a military industrial facility located in Mineral County, West Virginia that is owned by the United States and was formerly operated by Hercules. The United States also seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Hercules is liable for response costs that may be incurred by the United States in connection with ABL.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action and the Defendant pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this judicial district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391, because the releases or threatened releases of hazardous substances giving rise to the claims in this action occurred in this district.

### **DEFENDANT**

4. Defendant Hercules is a Delaware corporation. It was incorporated on or about 1912 as Hercules Powder Company. During the mid- to late-1960s, Hercules Powder Company changed its name to Hercules Incorporated.

5. Defendant Hercules is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

### **GENERAL ALLEGATIONS**

6. ABL is located on approximately 1600 acres in Mineral County, West Virginia.

7. The United States currently owns ABL and has owned it at all times relevant to this complaint.

8. The operations at ABL from 1945 until 1995, and continuing until the present, included, among other things, the research, development, testing and production of solid-fuel rocket motors.

9. The operations at ABL entailed the use, generation, and disposal of hazardous substances, including but not limited to trichloroethylene ("TCE"), 1,1,1-trichloroethane ("1,1,1-TCA"), methylene chloride, explosives and propellants, and beryllium and other metals.

10. From approximately 1945 until approximately 1995, Defendant Hercules operated ABL.

11. From approximately 1967 until approximately 1995, Hercules owned and operated a manufacturing facility adjacent to ABL known as the "Hercopel Plant."

12. Defendant Hercules used solvents, including but not limited to TCE, and explosives and propellants at the Hercopel Plant.

13. Defendant Hercules owned the hazardous substances used, and the wastes generated, at the Hercopel Plant.

14. Upon information and belief, Defendant Hercules selected ABL as the facility for the disposal of hazardous substances generated at the Hercopel Plant, including but not limited to solvents, explosives and propellants.

15. Upon information and belief, Defendant Hercules transported hazardous substances, including solvents, explosives and propellants, from the Hercopel Plant to ABL for disposal.

16. Sampling and testing of soil, sediments, surface water and groundwater on and adjacent to ABL have revealed that hazardous substances, including but not limited to TCE, 1,1,1-TCA, methylene chloride, explosives and propellants, and beryllium and other metals, have been released into the environment at and from ABL.

17. The United States began incurring response costs in connection with ABL not later than 1983, and will continue to incur response costs in the future.

18. In 1994, ABL was listed on the National Priorities List ("NPL"), 40 C.F.R. Part 300, Appendix B, the list of sites in the nation with the highest priority for cleanup to protect public health, welfare, or the environment. 59 Fed. Reg. 27989 (May 31, 1994).

19. The United States Navy has performed and will continue to perform response actions at ABL as the "lead agency" within the meaning of the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

20. EPA has overseen, and will continue to oversee, the performance of response actions at ABL.

21. The United States Department of Justice and the United States Navy have incurred response costs in enforcing CERCLA with respect to ABL.

#### **CLAIM FOR RELIEF**

22. Paragraphs 1 through 21 are re-alleged and incorporated herein by reference.

23. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by any other party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan.

24. ABL is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

25. Certain of the chemicals used, produced and/or disposed of at ABL constituted "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

26. There have been "releases" and/or threatened releases of "hazardous substances" into the "environment" at ABL, as those terms are defined in Section 101(22), (14), and (8) of CERCLA, 42 U.S.C. § 9601(22), (14), and (8).

27. Defendant Hercules "operated" ABL at the time of disposal of hazardous substances at ABL, within the meaning of Sections 101(20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a)(2).

28. Defendant Hercules "arranged for disposal" at ABL of hazardous substances owned or possessed by Defendant Hercules, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

29. Defendant Hercules accepted hazardous substances for transport to ABL, which it selected as the disposal facility for such hazardous substances, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

30. Certain actions taken by the United States in connection with ABL constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 101(25).

31. As of September 30, 2005, the United States had incurred in excess of \$27 million in response costs at ABL.

32. The response costs incurred by the United States in connection with ABL were incurred in a manner not inconsistent with the NCP.

33. The United States continues to incur response costs related to the release or threatened release of hazardous substances from ABL.

34. Pursuant to Sections 107(a)(2), (3), and (4) of CERCLA, 42 U.S.C. §§ 9607(a)(2), (3) and (4), Defendant Hercules is liable for response costs incurred or to be incurred by the United States in connection with response actions conducted at ABL, including related oversight, indirect, investigative, and enforcement costs.

35. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the United States is entitled to recover interest on the response costs it has incurred.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States of America, respectfully prays that this court:

1. Enter judgment in favor of the United States and against the Defendant for response costs incurred by the United States in connection with ABL, plus interest;
2. Enter a declaratory judgment that the Defendant is liable for response costs, which judgment shall be binding on any subsequent action or actions to recover further response costs pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2);
3. Award the United States its costs in this action; and
4. Grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

FOR THE UNITED STATES

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RONALD J. TENPAS  
Acting Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division

10/26/07  
Date

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